

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TABERNA CAPITAL MANAGEMENT, LLC,	:	District Court Case No.:
	:	08 CV 1817 [JSR]
Plaintiff,	:	
	:	
- against -	:	
	:	
SIDNEY B. DUNMORE, MICHAEL A. KANE,	:	ORAL ARGUMENT REQUESTED
and DHI DEVELOPMENT f/k/a DUNMORE	:	
HOMES, LLC,	:	
	:	
Defendants.	:	

**DEFENDANT SIDNEY B. DUNMORE’S REQUEST TO STRIKE PORTIONS OF THE
DECLARATION OF JILL L. MANDELL IN SUPPORT OF REPLY BRIEF IN
SUPPORT OF DEFENDANT SIDNEY B. DUNMORE’S MOTION(1) TO DISMISS FOR
LACK OF PERSONAL JURISDICTION OR IN THE ALTERNATIVE, (2) TO DISMISS
OR TRANSFER FOR IMPROPER VENUE, OR IN THE ALTERNATIVE (3) TO
TRANSFER VENUE FOR CONVENIENCE TO THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO
DIVISION**

Defendant Sidney B. Dunmore (“Defendant” or “Dunmore”), by his attorneys, hereby files his Request to Strike (each a “Request” and, collectively, the “Requests”) portions of the Declaration of Jill L. Mandell (“Mandell’s Decl.”) filed in support of the Plaintiff’s Memorandum of Law In Opposition to Defendants’ Motion To Dismiss or Transfer and supporting documents (collectively referred to as the “Opposition”) to the Motion (1) To Dismiss For Lack Of Personal Jurisdiction; Or In The Alternative; (2) To Dismiss Or Transfer For Improper Venue; Or In The Alternative, (3) To Transfer For Convenience To The United States District Court for the Eastern District of California, Sacramento Division (the “Motion”):

REQUESTS TO STRIKE

	Statement	Basis for Request to Strike
1	<p>Mandell Declaration, ¶ 6</p> <p>Sidney Dunmore and Kane caused the sale of DHI's \$250 million in assets to Dunmore NY in exchange for \$500. (Ex. C § 2.1) They then filed a Chapter 11 petition for Dunmore NY in New York, in the United States Bankruptcy Court for the Southern District of New York. In re Dunmore Homes, Inc., Case No. 07-13533 (MG).</p>	<p>-Lack of Foundation. Federal Rule of Evidence ("FRE") 602.</p> <p>- Lack of Personal Knowledge. FRE 602.</p> <p>- Hearsay. FRE 802.</p> <p>- Legal Conclusion. FRE 602, 701.</p> <p>-Assumes Facts Not in Evidence. FRE 611(a).</p> <p>This statement is contrary to the terms of the sale at issue as set forth in Dunmore's Reply filed concurrently herewith, which clearly provides that both the assets <u>and liabilities</u> of DHI Development f/k/a/ Dunmore Homes, LLC ("Dunmore CA") were sold to Dunmore New York, a New York corporation ("Dunmore NY"). This statement is also inconsistent with the the Declaration of Doug Strauch which is attached as Exhibit A to the Mandell's Decl.</p> <p><u>See</u> Reply at 3 and 5; <u>see also</u> Affirmation of Doug Strauch attached as Exhibit A to Mandell's Decl. ("Strauch's Decl.") at 13, ¶ 30.</p>
2	<p>Mandell Declaration, ¶ 14</p> <p>When California trade creditors moved to transfer the bankruptcy proceeding to California, Sidney Dunmore and Kane caused Dunmore NY to oppose the transfer motion and argue that New York was the most convenient venue. A copy of Dunmore NY's opposition brief is annexed hereto as Exhibit J.</p>	<p>- Lack of Foundation. FRE 602.</p> <p>- Lack of Personal Knowledge. FRE 602.</p> <p>- Hearsay. FRE 802.</p> <p>- Legal Conclusion. FRE 602, 701.</p> <p>-Assumes Facts Not in Evidence. FRE 611(a).</p> <p>This statement is false. Dunmore did not take any position with respect to the bankruptcy proceedings and did not file any documents seeking to oppose the motion to transfer the bankruptcy proceedings. In fact, Exhibit J attached to the Mandell's Decl. is the debtor's opposition, not Dunmore's opposition individually. <u>See</u> Exhibit J attached to Mandell's Decl.</p>

Dated: April 4, 2008

LEVENE, NEALE, BENDER, RANKIN & BRILL
L.L.P.

By: /s/Beth Ann R. Young
Beth Ann R. Young (CA State Bar No. 143945)
(Pro Hac Vice)
Michelle Sharoni Grimberg (CA State Bar No.
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